IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9332 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURAT TENNIS CLUB. THRO'SECRETARY. - Petitioner(s)

Versus

NIKHIBHAI KAPADIA. & 1 - Respondent(s)

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Appearance :
MR CL SONI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
MR PR ABICHANDANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 28/11/2007

ORAL JUDGMENT

1. The learned advocate for the petitioner seeks permission to delete respondent No.1. Permission granted. The amendment in the cause title to be carried out immediately.

2. RULE. The learned advocate for the respondent is directed to waive service. In light of the narrow scope of the controversy between the parties, the petition is taken up for final hearing and disposal today.

3. This petition challenges order dated 11.12.2006 made by the Joint Charity Commissioner in Suo Motu proceedings being Application No.11 of 2006 as well as Judicial Misc. Application No.12 of 2006 whereunder various directions have been issued, the principal being that the petitioner-Trust must not permit any of the Members of the Club, run by the Trust, to play the game of Rummy.

4. The learned advocate for the petitioner states that the impugned order is bad in law because as per settled legal position Rummy is a game of skill and cannot be equated with gambling. That the reading of the Memorandum of Association, more particularly Clause No.4(6) is erroneous and hence, the entire approach of respondent-Authority stands vitiated. He has placed reliance on various decisions of this Court to point out that this Court has consistently held that in light of the ratio laid down by the Apex Court, the game of Rummy does not amount to gambling and that the Authorities cannot prohibit such a game being played. Lastly, attention was invited to decision dated 20.06.2007 rendered in the case of the petitioner in Special Civil Application No.12277 of 2007 to submit that the basis of the complaint made before the Charity Commissioner and the action of the Police Authorities having been struck down the impugned order requires to be quashed and set aside.

5. The learned advocate for the respondent-Authority submitted that the respondent-Authority

has taken into consideration the facts. That as per Clause 4(6) of the Memorandum of Association the game of Rummy is not an activity which is permitted. That in the action undertaken by the Police Authorities, 17 members of the Club run by the petitioner-Trust have been apprehended, Panchnama drawn and FIR lodged resulting in framing of Charge-sheet and the Criminal Case is pending in the appropriate Court. Hence, according to the learned advocate for respondent-Authority the impugned order is justified and no interference is warranted.

6. On a plain reading of Clause 4(1) of the Memorandum of Association it is apparent that the main object is to run a club for the purpose of development of physical well being of the Members and their families as well as arranging for playing various games for the purpose of relaxation and entertainment and providing facilities for such purpose. Clause 4(6) of the Memorandum of Association on which reliance has been placed by the respondent-Authority stipulates that seven different games mentioned in the said clause are such that for

raising the standard in such games the club may permit the premises of the club along with various articles necessary for the said game to an organization involved in the development and raising of standard of any one of the seven games stipulated therein i.e. Badminton, Billiard, Bridge, Swimming, Table Tennis, Yoga and Health Club.

6. Therefore in juxtaposition when both Clauses 4(1) and 4(6) are read together it is not possible to restrict the activities of the Club to the seven games mentioned in Clause 4(6) because, the Clause deals with development and improving of standards of those specified games, but it is no where laid down that the activities of the Club shall be restricted to only to those specified games. In fact qua those seven games the facilities of the Club may be made available to other similarly interested organizations. Clause 4(1) takes within its sweep all games and if Rummy is being played in the premises of the club, the respondent-Authorities cannot take objection and impose a ban. The reason is simple. The position in law is well settled that the game of

Rummy is a game involving skill and is not a game of only chance and therefore, cannot be termed to be an activity of gambling.

7. In the aforesaid decision in the petitioner's own case in Special Civil Application No.12277 of 2006, this High Court has held as under:

> *"2. I have heard Mr. C.L. Soni learned advocate for the petitioner and Mr. Neeraj Soni learned A.G.P., for the respondents. So far as the games of Rummy and Bridge are concerned, by now it is well settled by various decisions of the Apex Court as well as High Courts that they are games of skill and not games of chance. In view of the same, the members are always at liberty to play such game in the club and they cannot said to be gambling in the club premises. The police cannot take any objections to their playing these games. However, if the police has information or any suspicion about illegal activities being carried out in the club they are always within their limits to raid the club and inquire into the matter and if necessary apprehend the culprits. But it is again made clear that if the members are playing Rummy and*

Bridge, the police cannot object to it and cause unnecessary harassment to them".

8. In light of the aforesaid position in law and on facts, the impugned order dated 11.12.2006 made by the respondent-Authority is held to be bad in law and is hereby quashed and set aside. The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

(D.A.MEHTA, J.)

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